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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1939

Office Supreme Court, U. S.
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CHARLES ELMORE CROPLEY
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No. 476

UNITED STATES OF AMERICA,
Appellant,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, NORTHERN PACIFIC RAILROAD COMPANY, NORTHWESTERN IMPROVEMENT COMPANY, ET AL.,

No. 477

NORTHERN PACIFIC RAILWAY COMPANY, NORTHERN PACIFIC RAILROAD COMPANY, ET AL.,
Appellants,
vs.
UNITED STATES OF AMERICA.

PETITION OF MINORITY STOCKHOLDERS OF NORTHERN PACIFIC RAILROAD COMPANY FOR LEAVE TO APPEAR IN THIS COURT TO ASSERT AND DEFEND THE RIGHTS OF THE CORPORATION ON APPEAL.

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now come the petitioners, Charles E. Schmidt and other minority stockholders of the Northern Pacific Railroad Company, and respectfully show:

1. In pursuance of the directions of the Act of Congress of June 25, 1929, (46 Stat. 41), the Attorney General of the United States, in the name of the United States of America as plaintiff, filed a bill in equity in the District Court of the United States for the Eastern District of Washington against the Northern Pacific Railway Company, Northern Pacific Railroad Company, Northwestern Improvement Company and others as defendants, (E-4389), for the purpose of having determined and adjudicated the respective rights of the United States of America, the Northern Pacific Railway Company, and the Northern Pacific Railroad Company, under the Congressional land grant to the Northern Pacific Railroad Company by the act of incorporation of said company of July 2, 1864, (13 Stat. 365).

2. The Northern Pacific Railroad Company was incorporated as a Federal corporation by Act of Congress of July 2, 1864, and is hereinafter referred to as the railroad company.

3. The Northern Pacific Railway Company is a corporation organized and existing under the laws of the State of Wisconsin and is hereinafter referred to as the railway company.

4. Section 5 of the act of June 5, 1929, provides as follows:

Sec. 5. The Attorney General is hereby authorized and directed forthwith to institute and prosecute such suit, or suits, as may, in his judgment, be required to remove the cloud cast upon the title to lands belonging to the United States as a result of the claim of said companies, and to have all said controversies and disputes respecting the operation and effect of said grants, and actions taken under them, judicially determined, and a *full accounting had between the United States and said companies,* and a determination made of the extent, if any, to which the said companies, or *either of them, may be entitled* to have

patented to them additional lands of the United States in satisfaction of said grants, and as to whether *either* of the said companies is lawfully entitled to all or any part of the lands within the indemnity limits for which patents have not issued, and the extent to which the United States may be entitled to recover lands wrongfully patented or certified. In the judicial proceedings contemplated by this Act there shall be presented, and the court or courts shall consider, make findings relating to, and determine to what extent the terms, *conditions,* and covenants, expressed or implied, in said granting Acts have been performed by the United States, and *by the Northern Pacific Railroad Company,* or its successors, including the legal effect of the *foreclosure* of any and all mortgages which said Northern Pacific Railroad Company *claims to have placed on said granted lands by virtue of* authority conferred in the said resolution of May 31, 1870, and the extent to which said *proceedings* and *foreclosures* meet the requirements of said resolution with respect to the disposition of said granted lands, and relative to what lands, if any, have been wrongfully or erroneously patented or certified to said *companies,* or *either* of them, as the result of fraud, mistake of law or fact, or through legislative or administrative misapprehension as to the proper construction of said grants or Acts supplemental or relating thereto, or otherwise, and the United States and the *Northern Pacific Railroad Company,* or the Northern Pacific Railway Company, or any other proper person, *shall* be entitled to have heard and determined by the court all questions of law and fact, and all other claims and matters which may be *germane* to a full and complete adjudication of the *respective* rights of the United States and said companies, or their successors in interest under said Act of July 2, 1864, and said joint resolution of May 31, 1870, and in other Acts or resolutions supplemental thereto, and all other questions of law and

fact presented to the joint congressional committee appointed under authority of the joint resolution of Congress of June 5, 1924 (Forty-third Statutes, page 461), notwithstanding that such matters may not be specifically mentioned in this enactment.

5. In said cause in equity, E 4389, in the District Court of the United States for the Eastern District of Washington, on June 27, 1939, the court entered certain degrees upon a review of the report of a Special Master filed in said cause, and on August 21, 1939, the United States of America, as plaintiff, and the Northern Pacific Railway Company, Northern Pacific Railroad Company and others as defendants, applied for and were, by the said District Court, granted appeals to the Supreme Court of the United States from the decree of said Court entered on June 27, 1939 and from other orders entered in said cause. Said appeals have been duly docketed in this Court, the appeal of the United States of America being No. 476, October Term 1939; and the appeal of the Northern Pacific Railway Company, Northern Pacific Railroad Company, and others, being No. 477, October Term, 1939. In said appeals there should be presented to this court for adjudication under the provisions of the Act of Congress of June 25, 1929, all controversies and disputes respecting the operation of said land grants and actions taken under them, and a determination made of the extent, if any, to which said companies (Northern Pacific Railroad Company and Northern Pacific Railway Company) or either of them, may be entitled to have patented to them additional lands of the United States, and as to whether either of said companies is lawfully entitled to all or any part of the lands within indemnity limits for which patents have not been issued.

Further, there should be presented to the Court the question as to what extent the terms, conditions and covenants

in the land grant acts have been performed by the United States, and by the Northern Pacific Railroad Company, or its successors, including the legal effect and validity of any and all mortgages which the Northern Pacific Railroad Company claims to have placed on the granted lands by virtue of authority conferred in the Joint Resolution of Congress of May 31, 1870, and the extent to which the mortgage foreclosure proceedings in 1875 and 1896 meet the requirements of the said Joint Resolution, as well as the validity of said foreclosure.

Further it is necessary that there should be presented to this court all questions relating to and germane to a full and complete adjudication of the respective rights of the United States, and the said Northern Pacific Railroad Company, and said Northern Pacific Railway Company, under the Act of July 2, 1864 and Joint Resolution of May 31, 1870.

6. There are outstanding approximately 800,000 shares of stock of the Northern Pacific Railroad Company, the Federal corporation above mentoined, and of said outstanding stock the Northern Railway Company, the Wisconsin Corporation above mentioned, owns approximately 770,000 shares. Charles E. Schmidt and other minority stockholders, the present petitioners, are the owners of approximately 32,590 shares of stock of the said Federal corporation.

7. The Northern Pacific Railway Company, the Wisconsin corporation above mentioned, claims title to the assets and property of the Northern Pacific Railroad Company, including the title to the land grant, by virtue of proceedings for foreclosure of certain claimed mortgages on the railroad company property in the year 1896, said foreclosure proceedings having been had in the District Court of the United States for the Eastern District of Wisconsin. The Northern Pacific Railway Company, as the holder of a vast majority

of the outstanding stock of the Northern Pacific Railroad Company, has, in said suit of the United States of America heretofore brought in the Eastern District of Washington, caused an appearance to be entered in said litigation for said Railroad company by counsel already representing the Railway company, and in said suit caused to be filed on behalf of the Railroad company, on January 18, 1932, a disclaimer as follows:

> "Defendant Northern Pacific Railroad Company, a corporation organized and existing under the provisions of the Act of July 2, 1846 (13 Stat. 365) says that it does not claim or pretend to have any right, title or interest in the subject matter of this suit as set forth in the original bill of complaint as amended or any part thereof, and this defendant disclaims any right, title or interest in said subject matter and every part thereof. Wherefore, this defendant prays that the original bill of complaint as amended be dismissed as to it."

Said disclaimer, was never authorized by the Directors, or Stockholders of the Railroad Company but was signed by counsel who already were employed and acting in said cause for the Northern Pacific Railway Company.

8. On February 13, 1932, the plaintiff moved the court to strike from the files said disclaimer of the Northern Pacific Railroad Company, but so far as your petitioners have been able to ascertain, no action was taken to strike from the record the said disclaimer and the same appears to be still operative.

9. On May 9, 1932 the Northern Pacific Railroad Company, by way of answer to the plaintiff's bill, signed by counsel for Railway Company admitted that it is a Federal corporation, denies that it is engaged in business, and adopts the Amended and Supplemental Answer already filed in said cause by the Northern Pacific Railway Company.

10. The Northern Pacific Railway Company through the vast preponderance of its stock ownership in the Northern Pacific Railroad Company has, from the inception of said litigation, so as aforesaid instituted by the Government in pursuance of the Act of Congress, hindered, hampered and opposed every effort made by minority stockholders of the Northern Pacific Railroad Company, in their attempts to have adjudicated the rights of the Federal corporation to the land grant made by Congress to the Railroad Company as hereinbefore set forth, and the plaintiff has to a large extent acquiesced in the position taken by the Railway Company relative to the rights of the Railroad Company, and has thus far joined with the Railway Company in thwarting the efforts of the minority stockholders of the Federal corporation to have the rights of said Federal corporation herein adjudicated.

The actions of the plaintiff and the Northern Pacific Railway Company in that regard appear of record in this cause.

11. The disclaimer of January 18, 1932, filed for the Railroad Company by counsel already appearing for the Railway Company, clearly reflects on the part of the Railway Company an attitude toward the Federal corporation that is wholly antagonistic and hostile. Notwithstanding the direction of Section 5 of the Act of June 25, 1929, (46 Stat. 41), there has not thus far been presented to the District Court and so far as the present petitioners are informed, there will not be presented to this Court on appeal, the opportunity for a judicial determination of the respective rights of the Northern Pacific Railroad Company and the Northern Pacific Railway Company under said land grant acts and the congressional resolutions following the same. As between the two companies, to wit, the Railroad Company and the Railway Company, their interests in any controversy as to said land grants are antagonistic, and thus

far in said cause the actions of the Northern Pacific Railroad Company have been absolutely dominated and controlled by the Railway Company, whose interest it is to oppose any claim offered by or on behalf of the Northern Pacific Railroad Company herein. Your petitioners, as minority stockholders of the Northern Pacific Railroad Company, aver that the reorganization of the Northern Pacific Railroad Company following the invalid and void 1896 mortgage foreclosures was invalid and inaffective to deprive the Federal corporation of the lands granted to it by the Act of Congress of July 2, 1864 and the amendments thereto.

12. In the Assignments of Errors offered by the Government to the District Court for the Eastern District of Washington on the plaintiff's application for appeal herein, the following appears as a specification of error:

> "31. The District Court erred in holding that the mortgages thus foreclosed were duly executed under authority conferred by the Joint Resolution of May 31, 1870."

Your petitioners respectfully show that in view of the attitude of the Northern Pacific Railway Company as hereinbefore set forth, and in view of the opposition of the Government to any act of the minority stockholders of the Railroad Company for protection of the latter's rights, there will not be made to this Court under said appeals a proper presentation of the rights of the Northern Pacific Railroad Company or of its interest in said land grants. The stand of the Northern Pacific Railway Company as to the same will necessarily be hostile, and unless this Court will permit an appearance by the present petitioners as minority stockholders in said appeals, and participation by their counsel in the arguments thereon, the Northern Pacific Railroad Company will be absolutely without protection in the premises, and the requirements of Section 5 of the Act of

June 25, 1929, will be ignored. This will entail serious loss to the Northern Pacific Railroad Company and subject your petitioners to great damage.

13. In any litigation concerning the title to the Congressional land grant your petitioners are advised that the United States of America is a necessary party, and there is no remedy open to your petitioners as minority stockholders aforesaid whereby the United States of America may be made a party, other than participation in the present suit of the Government now before this Court on appeal.

This Court has held that one case where minority stockholders may sue to enforce the rights of the corporation is,

> "Where the majority of the shareholders themselves are *oppressively* and illegally *pursuing a course in the name of the corporation* which is in violation of the rights of the other shareholders and which can only be restrained by the aid of a court of equity." (*Hawes* v. *Contra Costa Water Co.*, 104 U. S. 450; 26 L. Ed. 827, at 832.)

It seems clear under the principle of *dominus litis* that the petitioners are entitled to this Court's protection to preserve their rights against the decree of June 27, 1939, as well as the former decrees appealed from.

Doctor v. *Harrington*, 196 U. S. 579, 49 L. Ed. 606;
Williams v. *Morgan*, 111 U. S. 648, 28 L. Ed. 559;
National Paper & Paper Co. v. *Rossman*, 123 Minn. 355, 142 N. W. 820; *South Spring H. V. M. Co.* v. *Amedor V. M. Co.*, 145 U. S. 300, 36 L. Ed. 712;
Chamberlain v. *Cleveland*, 66 U. S. 419, 17 L. Ed. 93 at 94.

As the District Court would not permit these petitioners to be heard, and at the request of the *dominus litis* entered a decree contrary to the rights of the petitioners, clearly this

Court has the power and right and should permit the petitioners to defend against such decree in this Court.

In *Ogden* v. *Gilt Edge Consol. Mines Co.*, 255 Fed. 723, at 728 (C. C. A. 8), the court held and stated:

> "That stockholders of a corporation may, in equity, either sue for or *defend on behalf of the corporation*, if the directors fraudulently fail to do so, or where they are the beneficiaries of the action, is a well recognized principle of equity jurisprudence."

Your petitioners, therefore, pray that they may be permitted to appear by counsel in the argument on the above mentioned appeals to the end that the rights of the Northern Pacific Railroad Company as to the subject matter of said litigation may be justly and properly presented to the court for adjudication.

Respectfully submitted,

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Dated February 12, 1940.

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